

# **EXHIBIT 1**

**In The Matter Of:**

*City of Detroit*

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*Kevyn Orr*

*August 30, 2013*

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1 entered into, correct?

2 **MR. JURGENS:** Objection to form.

3 **MR. SHUMAKER:** Objection, form.

4 **A.** Here again, as I've said a couple of times today, I'm

5 going to stay away from legal conclusions as to

6 whether or not a lien would or would not have existed.

7 There are equitable liens that arise ex contractu

8 outside of law. There are other issues, but suffice

9 it to say this agreement seemed to impose a lien as a

10 matter of the agreement on the casino revenue.

11 **BY MS. GREEN:**

12 Q. Okay. You're not claiming any equitable lien?

13 **MR. JURGENS:** Objection.

14 **A.** We're not claiming a lien. We've done an analysis,

15 and there have been several memos that have gone back

16 and forth from counsel analyzing a number of different

17 issues at law and at equity. We -- there's -- me,

18 personally, under our agreement, there's no -- been no

19 assertion of an equitable lien.

20 **MS. GREEN:** I have nothing further then.

21 **THE WITNESS:** Sure.

22 Do you need -- you need this, don't you?

23 Is this -- did you -- excuse me. Did you mark this?

24 **MS. GREEN:** We can mark it as an exhibit.

25 I don't know that anyone has marked it yet. We can

1 left the deposition at 3:21 p.m.)

2 (Back on the record at 3:22 p.m.)

3 **VIDEO TECHNICIAN:** We are back on the

4 record at 3:22 p.m.

5 **EXAMINATION**

6 **BY MR. GOLDBERG:**

7 Q. How are you doing, Mr. Orr?

8 **A.** Hello, Mr. Goldberg. How are you?

9 Q. We met before. I'm Jerome Goldberg. I represent

10 David Sole, who's an interested party, he's a retiree.

11 along with his wife, who's also a retiree.

12 **MR. GOLDBERG:** First of all, I want to just

13 go on the record and thank Kirkland & Ellis and the

14 other attorneys for their patience and their working

15 with other attorneys in this case, and especially

16 someone like me who represents a very different point

17 of view and that they were objective and fair their --

18 in accommodating all the objectives here.

19 **BY MR. GOLDBERG:**

20 Q. Let me begin by asking just a few questions just so we

21 can put some of this into perspective. I want to call

22 your attention to Exhibit 3.

23 **A.** Yes. Okay.

24 Q. On page 34 of Exhibit 3, there's a chart here that

25 references expenditures from the years 2008 to 2012?

1 mark it as Exhibit 7.

2 **MARKED FOR IDENTIFICATION:**

3 **DEPOSITION EXHIBIT 7**

4 3:20 p.m.

5 (Discussion off the record at 3:20 p.m.)

6 (Back on the record at 3:20 p.m.)

7 **MS. GREEN:** I thought maybe it was earlier

8 and I just didn't know.

9 **THE WITNESS:** No, I don't think it was.

10 **MS. GREEN:** It's hard to hear down there.

11 **THE WITNESS:** We talked about the

12 collateral agreement.

13 **MS. GREEN:** We did. Okay.

14 **VIDEO TECHNICIAN:** Do we need to go off the

15 record for the second or are we staying on? Are you

16 asking questions?

17 **MS. GREEN:** Oh, were we on?

18 **THE WITNESS:** We can shut up.

19 **MR. SHUMAKER:** Why don't we go off for one

20 minute to get ourselves together.

21 **VIDEO TECHNICIAN:** All right. Thank you.

22 The time is 3:20 p.m. We are off the

23 record.

24 (Recess taken at 3:20 p.m.)

25 (Whereupon Lally Gartel and Stephen Hackney

1 **A.** Yes.

2 Q. And it indicates -- first of all, I just had a

3 question. Under the POCs, it has POC Swap GF, I

4 assume that means general fund?

5 **MR. SHUMAKER:** Counsel, I think you may be

6 pointing to a different page than the witness has in

7 front of him.

8 **BY MR. GOLDBERG:**

9 Q. It's page 34 in mine. Which one did I give you? I'm

10 talking about the June 14th, 2013.

11 **MR. SHUMAKER:** Yeah, there's an executive

12 summary and then there's a bigger one. Are you

13 looking at the bigger one?

14 **MR. GOLDBERG:** I have copies of what I'm

15 looking at.

16 **A.** These are the executive summaries.

17 **MR. GOLDBERG:** Why don't I mark these and

18 that will make it easier.

19 **THE WITNESS:** And the larger one is this

20 one.

21 **MR. SHUMAKER:** The larger one is Orr

22 Number 6. Take a look at that.

23 **MR. GOLDBERG:** Sure. Yeah, this is the one

24 I'm looking at.

25 **THE WITNESS:** That's the one, the larger

1 one.

2 **BY MR. GOLDBERG:**

3 Q. Okay. So Exhibit Number 6.

4 A. Okay. Mr. Goldberg, which page were you at?

5 Q. Page 34.

6 A. Of the original document?

7 Q. Yes.

8 A. Okay.

9 Q. Here we go, that chart, 34. And it's a chart that  
10 says study that -- lists for fiscal years ended actual  
11 expenditures for 2008 to 2012; is that correct?

12 A. Yes.

13 Q. I just want to be clear. It has under POC Swaps GF.  
14 That means general fund?

15 A. Yes.

16 Q. EF, is that enterprise fund?

17 A. Enterprise fund excluding department of  
18 transportation.

19 Q. And I'm trying to understand, does that mean that part  
20 of the POC Swaps are paid -- a small part is paid from  
21 the enterprise fund?

22 A. Yes. You'll see the corresponding numbers show for  
23 those categories.

24 Q. Okay. And I totaled up the years from 2008, 2012. It  
25 appears that \$247.5 million was paid on for the POC

1 to pay the Swap counterparties, correct?

2 A. Yes --

3 **MR. SHUMAKER:** Objection to form.

4 A. -- as we discussed earlier today.

5 **BY MR. GOLDBERG:**

6 Q. Just so I'm clear, the -- what we're talking about  
7 with the optional termination event. The exhibit --  
8 the same exhibit you're referencing -- let's just get  
9 this -- I want to call your attention to page 28.

10 A. Of the same exhibit?

11 Q. Same exhibit.

12 A. Okay.

13 Q. Am I correct in the -- that that reflects that as of  
14 May 31, 2013, according to your proposal for  
15 creditors, the negative fair value of the Swaps was  
16 \$343.6 million?

17 A. That's what it says. Recent valuations established  
18 the negative fair value --

19 **COURT REPORTER:** I'm sorry. You're reading  
20 way too fast.

21 **THE WITNESS:** I'm sorry.

22 A. Recent valuations established. The negative fair  
23 value of the Swaps at approximately 343.6 million as  
24 of May 31st.

25 **BY MR. GOLDBERG:**

1 Swaps during those years.

2 A. I don't have that total in front of me, but I'm going  
3 to take it that that's the accurate number.

4 Q. It appears that it's usually about between 45 to 50  
5 million a year.

6 A. Right, if you average 5, 10, 15, 20.

7 Q. Just so we're clear, I mean, that 247 million, none of  
8 that went to turn on any lights in the City of  
9 Detroit, did it?

10 **MR. SHUMAKER:** Object to the form.

11 A. It was legacy expenditures, debt service.

12 **BY MR. GOLDBERG:**

13 Q. It basically went to UBS and to Bank of America. It  
14 was their reward for betting correctly on a hedge bet,  
15 right?

16 **MR. JURGENS:** Objection to form.

17 **MR. SHUMAKER:** Objection to form.

18 A. Yeah, I'm going to stay away from characterizing it as  
19 a reward. There were payments made pursuant to  
20 existing certificates of participation at that time.

21 **BY MR. GOLDBERG:**

22 Q. And it was based on, as we talked about before, that  
23 the difference between the interest rate on the  
24 floating rate Swaps -- on the floating rate COPs and  
25 the fixed rate that the -- that the City was obligated

1 Q. So in the optional termination policy that's part of  
2 the forbearance agreement, if the City was to pay the  
3 initial payment, the City would still owe 264 -- we'd  
4 be paying 264 million approximately on the Swaps?

5 **MR. SHUMAKER:** Objection to form.

6 **BY MR. GOLDBERG:**

7 Q. We'd be paying 75 percent of whatever the termination  
8 amount is at that point?

9 A. Well, it's 75 percent of termination amount at that  
10 point, which I believe has since declined from  
11 May 31st.

12 Q. Why do you say it's declined?

13 A. Because interest rates have shifted, and so at any  
14 given time we'd have to value the interest rate  
15 formula at the time you choose to exercise the  
16 optional termination provision of the forbearance  
17 agreement.

18 Q. The interest rate that we're talking about on the Swap  
19 is linked to the LIBOR; isn't that correct?

20 A. Yes.

21 Q. The three-month LIBOR?

22 A. Yes. I believe so.

23 Q. I pulled the three-month LIBOR historical index. It  
24 indicated that as of -- might as well as mark this as  
25 an exhibit.

1 **MR. GOLDBERG:** Can you mark this as an  
2 exhibit?  
3 **MARKED FOR IDENTIFICATION:**  
4 **DEPOSITION EXHIBIT 8**  
5 3:29 p.m.  
6 **BY MR. GOLDBERG:**  
7 Q. It appears that as of August of 2013, the three-month  
8 LIBOR rate was .2655 percent?  
9 **MR. SHUMAKER:** Objection, foundation.  
10 **A. Is there -- if you're talking about --**  
11 **BY MR. GOLDBERG:**  
12 Q. Under 2013.  
13 **A. 2013, a specific category in August which reads**  
14 **0.26550.**  
15 Q. Right. So it's actually gone down since July of 2013  
16 according to this chart.  
17 **A. Yes. Did I say up before?**  
18 Q. You had indicated that the interest rates -- right,  
19 that the -- I mean, if it goes down, the City owes  
20 more; isn't that correct?  
21 **A. Right.**  
22 Q. Just so we're clear again, that 200 -- whatever --  
23 whether the figure is 247 million or 200 million, the  
24 optional termination payment is not going to be -- the  
25 City gets no direct benefit from that payment?

1 yesterday due to an illness of my wife, but --  
2 **A. Oh, I'm sorry.**  
3 Q. -- they were talking about a \$350 million bond of some  
4 kind that is being looked into being floated, correct?  
5 **A. Here again, I want to be careful. It's unclear**  
6 **whether or not it is a bond.**  
7 Q. Okay.  
8 **A. What is clear is there's some post petition financing**  
9 **proposal which are quite sensitive, but that number is**  
10 **not an unreasonable number and it has been mentioned**  
11 **about in the press.**  
12 Q. And is it reasonable to say that that 2 -- 350 million  
13 is not going to come free to the City?  
14 **A. No. The City will have to finance it in some fashion.**  
15 Q. I mean, I did a little research myself and looked up a  
16 bond in Ann Arbor that was recently financed for  
17 340 million at 4 percent which is, I would think we  
18 both agree, was a good interest rate --  
19 **A. Um-hm.**  
20 Q. -- and the -- Ann Arbor would be paying 230 million in  
21 interest on that bond over a 25-year period.  
22 **A. Here again, Mr. Goldberg, I want to be very careful.**  
23 **Without representing or agreeing that the post**  
24 **petition financing that's being discussed will take**  
25 **the characteristic of a bond.**

1 **MR. JURGENS:** Objection.  
2 **MR. SHUMAKER:** Objection to form.  
3 **A. Well --**  
4 **BY MR. HACKNEY:**  
5 Q. Let me be -- strike that question.  
6 No lights get turned on from that money.  
7 That's money that comes out of the City budget.  
8 **MR. SHUMAKER:** Same objection.  
9 **A. Well, it's money -- yeah, I would say that it's money**  
10 **that the City is obligated to pay in some fashion, but**  
11 **to the extent we get a discount, the City benefits.**  
12 **BY MR. GOLDBERG:**  
13 Q. I heard before the testimony, and I think it's pretty  
14 obvious, that the City does not have the money on hand  
15 to pay that termination amount, correct?  
16 **MR. JURGENS:** Objection to form.  
17 **A. Yes, I'm told that is correct.**  
18 **BY MR. GOLDBERG:**  
19 Q. And to do so it's going to have to float another bond  
20 or some kind of loan?  
21 **A. Well, it would have to in some fashion derive some**  
22 **funding from the capital markets, yes.**  
23 Q. Okay. I read something, and I heard the same figures  
24 floated here. I read an article in the Detroit News  
25 and I heard the same -- I wasn't able to come

1 Q. No problem. But either way, we are in agreement that  
2 that financing -- we don't have -- the City does not  
3 have a source for -- it doesn't have a relationship  
4 with the Fed that the banks have where it gets a zero  
5 qualitative easing and zero percent loans, does it?  
6 **A. The City does not -- is not a qualified financial**  
7 **institution to go to the Fed discount window nor does**  
8 **it have an extra several hundred million dollars in**  
9 **its funds.**  
10 Q. Let me ask another question. I want to call your  
11 attention to the forbearance agreement.  
12 **A. Yes.**  
13 Q. Which exhibit is that?  
14 **A. That's Exhibit 2.**  
15 Q. Let me call your attention to page 14.  
16 **A. Yes.**  
17 Q. And it indicates under mid-market amount --  
18 **A. Yes.**  
19 Q. -- am I reading it correctly to say that the -- when  
20 the optional termination goes into effect, assuming it  
21 goes into effect, that the calculation on what's owed  
22 on the Swap that's the basis for the termination is  
23 based on the ISDA fix 3?  
24 **MR. SHUMAKER:** Objection to form. The  
25 document speaks for itself.

1 **BY MR. GOLDBERG:**  
 2 Q. Okay.  
 3 A. Yeah, here again, the document speaks to itself and it  
 4 says methodology that is agreed to by the City and  
 5 based upon the present value as it speaks to the rest  
 6 of the document, yes.  
 7 Q. Have you looked into the fact that there's a lot of  
 8 literature out now that's exposing a pretty large  
 9 scandal with reg -- regard to the ISDA fix that  
 10 involves and implicates both Bank of America and UBS?  
 11 **MR. JURGENS:** Object to form.  
 12 A. Without characterizing the nature of the literature, I  
 13 think it's safe to say that I am aware of some issues  
 14 that have been discussed regarding ISDA, fixed.  
 15 **BY MR. GOLDBERG:**  
 16 Q. Are you aware also of issues that have come out with  
 17 regard to the LIBOR, specifically with regard to UBS  
 18 and Bank of America in the setting of using the LIBOR  
 19 as a standard?  
 20 **MR. JURGENS:** Objection to form.  
 21 A. I am aware that in the past years there have been some  
 22 questions raised regarding the LIBOR for certain  
 23 financial institutions, yes.  
 24 **BY MR. GOLDBERG:**  
 25 Q. Has that affected your analysis of how to deal with

1 A. I had heard that. I have not read the final judgment.  
 2 Q. Well, I'd be glad to pass you down a copy.  
 3 **MR. GOLDBERG:** Why don't we mark this.  
 4 **MARKED FOR IDENTIFICATION:**  
 5 DEPOSITION EXHIBIT 9  
 6 3:36 p.m.  
 7 **BY MR. GOLDBERG:**  
 8 Q. Are you also aware that Bank of America has been  
 9 investigated for potential rigging with regard to the  
 10 municipal bond market?  
 11 **MR. JURGENS:** Objection to form.  
 12 A. I am aware that Bank of America has been investigated.  
 13 The exact specifics of the investigation I am not  
 14 aware of.  
 15 **BY MR. GOLDBERG:**  
 16 Q. In light of these investigations that deal with  
 17 rigging of the municipal bond market, was that taken  
 18 into consideration by the City in how to approach the  
 19 question of this forbearance agreement and potential  
 20 action on these Swaps?  
 21 A. Perhaps you could be more specific in what way you're  
 22 asking whether that was taken into consideration.  
 23 Q. I mean, if there, in fact, was fraud -- based on the  
 24 fact there's at least an indication of fraudulent  
 25 activity by both Bank of America and UBS within the

1 the Swap counterparties in terms of the -- the  
 2 forbearance agreement?  
 3 A. No.  
 4 Q. The fact that it's potential fraud was involved in the  
 5 setting of these --  
 6 **MR. JURGENS:** Objection to form.  
 7 **MR. SHUMAKER:** Objection to form.  
 8 A. Mr. Goldberg, I'm going to defer from accepting the  
 9 characterization of potential fraud. It is -- it is  
 10 as reported.  
 11 **BY MR. GOLDBERG:**  
 12 Q. Okay. That's fine.  
 13 Are you also aware that the -- that UBS  
 14 was -- let me find that.  
 15 Are you aware that UBS has been sued by the  
 16 Securities and Exchange Commission for rigging in  
 17 regard to municipal bonds?  
 18 A. In past years?  
 19 Q. That there was a final judgment -- yes, in past years.  
 20 A. Yes.  
 21 Q. Are you aware of the final judgment that was -- there  
 22 was a final judgment on a case that was filed on --  
 23 it's 112539 -- that -- and that one of the bonds that  
 24 actually was involved in that case was the Detroit  
 25 water and sewage bond case?

1 municipal bond market, has there been any  
 2 investigation as to whether or not that was the case  
 3 with -- with regard to the Swaps associated with the  
 4 POCs?  
 5 **MR. JURGENS:** Objection to form.  
 6 **MR. SHUMAKER:** Objection to form,  
 7 foundation.  
 8 A. Yeah, first, it's not clear that there was fraud with  
 9 respect to POCs. I think your prior question  
 10 concerning Bank of America concerned bonds at DWSD  
 11 that as my understanding are not implicated by this  
 12 process, meaning the forbearance agreement, but have  
 13 we calculated and analyzed the possibility that there  
 14 may be issues surrounding potential concerns in  
 15 connection with the Swap agreement, the answer is yes.  
 16 **BY MR. GOLDBERG:**  
 17 Q. And who was -- who were those discussions with in  
 18 terms of whether or not to pursue that?  
 19 A. I would have had discussions with my counsel.  
 20 Q. When you say your counsel, who do you mean?  
 21 A. My attorneys.  
 22 Q. Jones Day, is that --  
 23 A. Well, Jones Day. We also have local counsel that's  
 24 involved that's sitting here, Pepper Hamilton, and  
 25 others.

1 **BY MR. GOLDBERG:**

2 Q. Okay.

3 A. Yeah, here again, the document speaks to itself and it  
4 says methodology that is agreed to by the City and  
5 based upon the present value as it speaks to the rest  
6 of the document, yes.

7 Q. Have you looked into the fact that there's a lot of  
8 literature out now that's exposing a pretty large  
9 scandal with reg -- regard to the ISDA fix that  
10 involves and implicates both Bank of America and UBS?

11 **MR. JURGENS:** Object to form.

12 A. Without characterizing the nature of the literature, I  
13 think it's safe to say that I am aware of some issues  
14 that have been discussed regarding ISDA, fixed.

15 **BY MR. GOLDBERG:**

16 Q. Are you aware also of issues that have come out with  
17 regard to the LIBOR, specifically with regard to UBS  
18 and Bank of America in the setting of using the LIBOR  
19 as a standard?

20 **MR. JURGENS:** Objection to form.

21 A. I am aware that in the past years there have been some  
22 questions raised regarding the LIBOR for certain  
23 financial institutions, yes.

24 **BY MR. GOLDBERG:**

25 Q. Has that affected your analysis of how to deal with

1 A. I had heard that. I have not read the final judgment.

2 Q. Well, I'd be glad to pass you down a copy.

3 **MR. GOLDBERG:** Why don't we mark this.

4 **MARKED FOR IDENTIFICATION:**

5 DEPOSITION EXHIBIT 9

6 3:36 p.m.

7 **BY MR. GOLDBERG:**

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9 investigated for potential rigging with regard to the  
10 municipal bond market?

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12 A. I am aware that Bank of America has been investigated.

13 The exact specifics of the investigation I am not  
14 aware of.

15 **BY MR. GOLDBERG:**

16 Q. In light of these investigations that deal with  
17 rigging of the municipal bond market, was that taken  
18 into consideration by the City in how to approach the  
19 question of this forbearance agreement and potential  
20 action on these Swaps?

21 A. Perhaps you could be more specific in what way you're  
22 asking whether that was taken into consideration.

23 Q. I mean, if there, in fact, was fraud -- based on the  
24 fact there's at least an indication of fraudulent  
25 activity by both Bank of America and UBS within the

1 the Swap counterparties in terms of the -- the  
2 forbearance agreement?

3 A. No.

4 Q. The fact that it's potential fraud was involved in the  
5 setting of these --

6 **MR. JURGENS:** Objection to form.

7 **MR. SHUMAKER:** Objection to form.

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11 **BY MR. GOLDBERG:**

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14 was -- let me find that.

15 Are you aware that UBS has been sued by the  
16 Securities and Exchange Commission for rigging in  
17 regard to municipal bonds?

18 A. In past years?

19 Q. That there was a final judgment -- yes, in past years.

20 A. Yes.

21 Q. Are you aware of the final judgment that was -- there  
22 was a final judgment on a case that was filed on --  
23 it's 112539 -- that -- and that one of the bonds that  
24 actually was involved in that case was the Detroit  
25 water and sewage bond case?

1 municipal bond market, has there been any  
2 investigation as to whether or not that was the case  
3 with -- with regard to the Swaps associated with the  
4 POCs?

5 **MR. JURGENS:** Objection to form.

6 **MR. SHUMAKER:** Objection to form,  
7 foundation.

8 A. Yeah, first, it's not clear that there was fraud with  
9 respect to POCs. I think your prior question  
10 concerning Bank of America concerned bonds at DWSD  
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12 process, meaning the forbearance agreement, but have  
13 we calculated and analyzed the possibility that there  
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15 connection with the Swap agreement, the answer is yes.

16 **BY MR. GOLDBERG:**

17 Q. And who was -- who were those discussions with in  
18 terms of whether or not to pursue that?

19 A. I would have had discussions with my counsel.

20 Q. When you say your counsel, who do you mean?

21 A. My attorneys.

22 Q. Jones Day, is that --

23 A. Well, Jones Day. We also have local counsel that's  
24 involved that's sitting here, Pepper Hamilton, and  
25 others.

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Page 327

1 Q. I mean, isn't Jones Day -- doesn't Jones Day represent  
2 this Bank of America as one of its clients on its Web  
3 site?  
4 **A. Yes, Jones Day does represent Bank of America.**  
5 Q. How could Jones Day investigate one of its own clients  
6 for potential fraud?  
7 **MR. SHUMAKER:** Objection, form.  
8 **MR. JURGENS:** Objection, form.  
9 **A. I am today, Mr. Goldberg, a client of Jones Day. The**  
10 **specific practices of Jones Day regarding its**  
11 **investigations, I would suggest that you refer to**  
12 **them.**  
13 **BY MR. GOLDBERG:**  
14 Q. Okay. I'm just saying you utilize them --  
15 **A. Yes, I do.**  
16 Q. -- for their -- for their advice on whether or not to  
17 conduct such an investigation. I'm trying to ask you  
18 as your -- in your independent position as emergency  
19 manager, wouldn't you think that a law firm that  
20 represents the precise person you're asking to  
21 investigate for fraud could not give you an  
22 objective appraisal?  
23 **A. No.**  
24 **MR. JURGENS:** Objection to form.  
25 **MR. SHUMAKER:** Objection to form.

1 financial crisis in Detroit?  
2 **A. Yes. To be clear, under 436 I have no independent**  
3 **prosecutorial authority, but I do have the authority**  
4 **to make criminal referrals to appropriate**  
5 **prosecutorial authorities.**  
6 Q. In light of the cost to the City of the Swaps and the  
7 continuing costs, which we all acknowledge will be  
8 substantial even in light of the forbearance  
9 agreement, have you made any referral to at least do  
10 a -- conduct an investigation based on the evidence  
11 that, that -- I'm not accusing them of criminal  
12 activity in these activities. I have no basis for  
13 doing that, but on the other hand that fact that  
14 their -- some of their top executives in this area  
15 have been convicted would at least lead me to want to  
16 take a look at that in light of Detroit's situation.  
17 **MR. JURGENS:** Objection to form.  
18 **MR. SHUMAKER:** Objection, form.  
19 **A. Yeah, it is a run-on question, Mr. Goldberg, but let**  
20 **me say this. We are -- we have an -- analyzed to the**  
21 **degree and looked at everything significantly related**  
22 **to this transaction. Any --**  
23 **BY MR. GOLDBERG:**  
24 Q. Have or have not? I'm sorry.  
25 **A. We have. We have.**

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1 **A. No. In my experience, having worked now at three**  
2 **different law firms, I have seen situations where law**  
3 **firms are fully capable of investigating clients, yes.**  
4 **BY MR. GOLDBERG:**  
5 Q. Are you aware that three executives of UBS were in --  
6 recently jailed that -- who were involved in municipal  
7 bond division were recently jailed?  
8 **A. I'm aware that there were prosecutions related to UBS.**  
9 **I wasn't aware of the exact number or who they are.**  
10 Q. Okay. I do have -- now, I'm not privy to much on that  
11 either, but I do have articles that do cite that.  
12 **A. Okay.**  
13 Q. And they cited three people who were just convicted in  
14 July of this year.  
15 **A. Okay.**  
16 Q. Are you aware that Bank of -- an executive of Bank of  
17 America in its municipal bond division was indicted in  
18 2012?  
19 **A. I don't recall if I was aware of that.**  
20 Q. Okay. Let me just ask under -- pursuant to the Public  
21 Act 436 section 13 -- section 16, aren't you mandated  
22 to conduct a criminal investigation, or at least to  
23 refer potential suspicion of criminal investigation to  
24 the Attorney General in connection with -- if there's  
25 any kind of criminal activity associated with the

1 Q. Okay.  
2 **A. If there appears to be a basis for making a criminal**  
3 **referral of any kind related to anything that falls**  
4 **under my purview of 436, I will do that.**  
5 Q. But at this point nothing -- there hasn't even been a  
6 request for such an investigation?  
7 **A. I would be careful about -- I -- I have asked -- there**  
8 **are matters that are under investigation that may or**  
9 **may not implicate the subject matters you're talking**  
10 **about. I'm going to defer to speak about them**  
11 **further.**  
12 Q. Okay. Are you familiar with the circumstances that  
13 led to the 2005 Swap?  
14 **A. I'm familiar with what I've read. I wasn't here in**  
15 **the City at the time.**  
16 Q. Do you know why Moody's -- not Moody's -- Fitch and  
17 Standard & Poor's would have been at the table along  
18 with UBS when this -- when this was discussed?  
19 **A. First, I don't know that they were at the table and,**  
20 **secondly, if they were, I do not know why they would**  
21 **have been.**  
22 Q. Well, I do have a photograph of them at the table  
23 which I'd be glad to share with you --  
24 **A. Okay.**  
25 Q. -- from the Michigan Citizen. It was taken at that



1 time. Let me see if I can find that.  
 2 **MR. GOLDBERG:** Here, I can mark this.  
 3 **MARKED FOR IDENTIFICATION:**  
 4 DEPOSITION EXHIBIT 10  
 5 3:43 p.m.  
 6 **BY MR. GOLDBERG:**  
 7 Q. This is a photograph taken by the -- it was in the  
 8 Michigan Citizen July 31st, 2005, it reflects a  
 9 picture of Sha -- Sean Werdlow, Stephen Murphy of  
 10 Standard & Poor -- Poor's, Joe Keefe -- Joe O'Keefe of  
 11 Fitch, the Deputy Mayor, Anthony Adams, and the -- and  
 12 the -- and -- and the representative of SBS at the  
 13 table.  
 14 **MR. SHUMAKER:** Is there a question?  
 15 **BY MR. GOLDBERG:**  
 16 Q. Sure. I was asking why would Moody -- why would  
 17 Standard & Poor and Fitch be at the table?  
 18 **MR. SHUMAKER:** Objection, foundation, form,  
 19 document speaks for itself.  
 20 **A. Yeah, Mr. Goldberg, this purports to be a document**  
 21 **showing some of these members at counsel table. I**  
 22 **have no idea -- I wasn't here, and I have no idea what**  
 23 **the discussions were and whether or not it's**  
 24 **accurately represented to be something related to**  
 25 **this. This document speaks for itself.**

1 **MR. SHUMAKER:** Object to form, foundation.  
 2 **A. I wasn't here in the City at the time. I have no**  
 3 **idea.**  
 4 **BY MR. GOLDBERG:**  
 5 Q. Okay. That's fine.  
 6 Have you approached the Securities and  
 7 Exchange Commission to conduct any kind of  
 8 investigation of the Swaps in light of their extensive  
 9 investigations of UBS and Bank of America?  
 10 **MR. JURGENS:** Objection to form.  
 11 **A. Yeah, here again, any -- your question is have I? I**  
 12 **think I can answer your question. I think the answer**  
 13 **is no.**  
 14 **BY MR. GOLDBERG:**  
 15 Q. Okay. And you haven't approached them to intervene in  
 16 the bankruptcy which they have a right to do as we  
 17 both know under the bankruptcy code?  
 18 **A. I would hazard a guess that the Security and Exchange**  
 19 **Commission is aware of Detroit's bankruptcy.**  
 20 Q. But you have not approached them to aid you in doing a  
 21 proper investigation of the Swaps?  
 22 **A. No. I -- I think they're fully capable of determining**  
 23 **what they should do within their mission.**  
 24 Q. Have you looked into the mortgage practices of Bank of  
 25 America that -- in light of the financial crisis of

1 **BY MR. GOLDBERG:**  
 2 Q. So you haven't done really any substantive  
 3 investigation on what the circumstances were that --  
 4 that: why -- that put the City into the pension  
 5 obligations with certificates and Swap --  
 6 **MR. SHUMAKER:** Objection to form.  
 7 **BY MR. GOLDBERG:**  
 8 Q. -- when they first were initiated in 2005?  
 9 **A. Yeah, all I can say is this -- this picture appears to**  
 10 **be what it purports to be and speaks for itself. I**  
 11 **don't know if it's accurate or not.**  
 12 Q. Let me just ask one quick -- that I was kind of  
 13 curious about, personally. It appears that there  
 14 was -- the first COP and Swap was in 2005. Then they  
 15 were terminated and a new one -- new COPs and Swaps  
 16 were placed in 2006. Is that your understanding?  
 17 **A. I don't know if that's my understanding. I know there**  
 18 **were -- there were two series that went on. I'm going**  
 19 **to be careful with the question of replacing them, but**  
 20 **let's go with your question.**  
 21 Q. Okay. I guess my curiosity is why the banks would pay  
 22 a termination fee of 2.7 million, according to those  
 23 documents, to the City to then have them  
 24 renegotiate -- replaced?  
 25 **A. Mr. Goldberg --**

1 Detroit?  
 2 **MR. JURGENS:** Objection to form.  
 3 **MR. SHUMAKER:** Objection to form.  
 4 **MR. ESSAD:** Objection to relevance.  
 5 **A. I don't think my duties under 436 would specify to**  
 6 **look into the mortgage crisis, so the answer is no.**  
 7 **BY MR. GOLDBERG:**  
 8 Q. But you would agree with me that the mortgage crisis  
 9 and the subprime lending crisis is a major contributor  
 10 to Detroit's financial crisis, would you not?  
 11 **MR. SHUMAKER:** Objection to form,  
 12 foundation.  
 13 **A. Mr. Goldberg, I don't know if it was or wasn't.**  
 14 **BY MR. GOLDBERG:**  
 15 Q. You don't know if it was or it wasn't?  
 16 **A. No. I've -- I've heard reports that there was**  
 17 **disproportionate mortgage foreclosures and so on and**  
 18 **so forth, but I've made no conclusion as to whether or**  
 19 **not that was a major contributor to Detroit's**  
 20 **financial crisis.**  
 21 Q. I've got you. Well, let me -- let me run this --  
 22 (Whereupon Vincent Marriott and Matthew  
 23 Summers left the Deposition at 3:47 p.m.)  
 24 **MS. ENGLISH:** Can we go off the record for  
 25 one second, please?

1 **VIDEO TECHNICIAN:** We are off the record.  
 2 The time is 3:47.  
 3 (Recess taken at 3:47 p.m.)  
 4 (Back on the record at 3:48 p.m.)  
 5 **VIDEO TECHNICIAN:** Back on the record at  
 6 3:48 p.m.  
 7 **BY MR. GOLDBERG:**  
 8 Q. I'm sorry, I didn't bring that report with me.  
 9 So your public -- your statement to me is  
 10 you're not clear whether the subprime mortgage crisis  
 11 in Detroit was a factor in Detroit's financial crisis?  
 12 **A. No. My statement --**  
 13 **MR. SHUMAKER:** Objection to form.  
 14 **A. My statement to you -- I believe your question was,**  
 15 **was it a major factor, and I said I understand there**  
 16 **have been reports, allegations, and stories that there**  
 17 **was disproportionate mortgage foreclosure in the City**  
 18 **of Detroit. I don't know if that was a major factor**  
 19 **in its financial crisis.**  
 20 **BY MR. GOLDBERG:**  
 21 Q. And you haven't looked into that issue independently?  
 22 **A. No, I've not looked into it independently.**  
 23 Q. Even though the banks -- the same banks that are  
 24 claiming all these Swaps were directly involved in the  
 25 subprime mortgage crisis?

1 **overcharges or obligations that it has to other --**  
 2 **other organizations and entities.**  
 3 Q. Are you aware that chargebacks specifically deal with  
 4 chargebacks to the County that the County buys -- pays  
 5 the City for foreclosed tax -- foreclosed properties,  
 6 then sells them, and the City is responsible for the  
 7 difference between what they're sold for and what  
 8 the -- what originally was paid to the City?  
 9 **A. Yes, as I said --**  
 10 **MR. SHUMAKER:** Objection, form, foundation.  
 11 **A. As I said, it's a process by which the City has**  
 12 **obligations to other organizations and entities.**  
 13 **BY MR. GOLDBERG:**  
 14 Q. Are you aware that the state has hundreds of -- at  
 15 least 200 million dollars available in the Hardest --  
 16 Helping Hardest Hit funds that could be used to pay  
 17 off delinquent property taxes?  
 18 **A. I've heard that representation before in terms of the**  
 19 **Hardest Hit funds. What I am aware of is that the**  
 20 **City is entitled to get 52 million dollars of the**  
 21 **late -- latest one hundred million dollar transfer of**  
 22 **the Hardest Hit funds for blight remediation.**  
 23 Q. That's true. Which affects -- affects your general  
 24 proposal in terms of the cost of blight, correct?  
 25 **A. Well, it helps us in terms of getting at the cost of**

1 **MR. JURGENS:** Objection to form.  
 2 **A. Here again, your characterization was directly**  
 3 **involved. My mission in this forbearance agreement is**  
 4 **look at whether or not this is in the best interest of**  
 5 **the City at the time.**  
 6 **BY MR. GOLDBERG:**  
 7 Q. Sure.  
 8 **A. It seems to be as you and I have discussed before,**  
 9 **several times now, that you have expressed concerns**  
 10 **about a broader issue regarding banks involvement with**  
 11 **the mortgage foreclosure crisis in the City of**  
 12 **Detroit. In my opinion, that's not directly related**  
 13 **to the issue that we have at hand in the forbearance**  
 14 **agreement.**  
 15 Q. Let me just ask you one other question. We've been  
 16 talking about alternative sources of financing.  
 17 You're familiar with the last CAFR?  
 18 **A. Yes.**  
 19 Q. Are you familiar with the -- what the 82 million in  
 20 chargebacks means in this CAFR that the City is  
 21 paying?  
 22 **A. Yes, I think I have some understanding.**  
 23 Q. What is your understanding of it, sir?  
 24 **A. That there's a certain obligation on the City to pay**  
 25 **some money out based upon an analysis of either**

1 **blight as quickly as possible.**  
 2 Q. But my question was a little different on that.  
 3 **A. Um-hm.**  
 4 Q. Have you intervened with Governor Snyder who you --  
 5 who you're -- your appointor --  
 6 **A. Right.**  
 7 Q. -- to secure the release of these Hardest Hit funds to  
 8 pay off property taxes which would both stabilize  
 9 communities to keep people in their homes and  
 10 stabilize the City budget by avoiding the need to pay  
 11 80 million in chargebacks?  
 12 **MR. SHUMAKER:** Objection, foundation.  
 13 **A. It is not -- it is not -- it has been made clear to me**  
 14 **that it is not clear to me that, one, we'd have access**  
 15 **to those funds and that those funds can be**  
 16 **appropriately used for that purpose.**  
 17 **BY MR. GOLDBERG:**  
 18 Q. It's not?  
 19 **A. It's -- it's not clear. That's --**  
 20 Q. Well, I'll send you some literature on that so you can  
 21 clarify that.  
 22 **A. Okay.**  
 23 **MR. GOLDBERG:** Okay. Okay. Thank you very  
 24 much.  
 25 **THE WITNESS:** Thank you very much.

## **EXHIBIT 2**

CITY OF DETROIT  
**PROPOSAL FOR CREDITORS**

JUNE 14, 2013

This proposal is based on numerous projections and assumptions concerning future uncertain events including estimates of tax revenues and forecasts of future business and economic conditions in the city, all of which are beyond the control of the city. Actual results may differ from the assumptions and projections presented herein, and such differences could be material.

Additional data are being gathered or developed, and various critical financial and operational analyses remain in process. Thus, this proposal remains subject to material change.

OK  
9 + 6

# DETROIT FACES STRONG ECONOMIC HEADWINDS

## DETERIORATING MACROECONOMIC CONDITIONS.

During the past several decades, the City of Detroit (the "City") has experienced changes that have adversely affected the economic circumstances of the City and its residents.

**Declining Population.** The City's population has declined 63% since its postwar peak, including a 26% decline since 2000:

- June 1950: 1,849,600
- June 1990: 1,028,000
- June 2000: 951,270
- June 2010: 713,777
- December 2012: 684,799

**High Unemployment.** Despite some recent improvement, the City's unemployment rate has nearly tripled since 2000:

- June 2000: 6.3%
- June 2010: 23.4%
- June 2012: 18.3%

### Number of Detroit Residents Employed.

	2000	2010	2012
Labor force	381,498	361,538	343,856
Employment	353,813	278,063	279,960
Unemployment	27,685	83,475	63,896
Unemployment rate	7.3%	23.1%	18.6%

### **The City is Not Paying Its Debts as They Come Due.**

- The City is not making its pension contributions as they come due. The City has deferred payment of its year-end Police and Fire Retirement System contributions (and finances such deferrals at a rate of 8%). As of May 2013, the City had deferred approximately \$54 million in pension contributions related to current and prior periods and will defer approximately \$50 million on June 30, 2013 for current year PFRS pension contributions. Therefore, by fiscal year end the City will have deferred over \$100 million of pension contributions.
- The City will not make the scheduled \$39.7 million payments due on its pension-related certificates of participation on June 14, 2013.

### **Plummeting Credit Ratings.**

The City's credit ratings have continuously declined during the past decade and are well below investment grade. No major U.S. city has lower credit ratings.

### **Ratings on the City's Uninsured General Obligation Bonds**

	Standard & Poor's			Fitch
	Moody's			
June 30, 2003	Baa1	A-		A
June 30, 2004	Baa1	A-		A
June 30, 2005	Baa1	BBB+		BBB+
June 30, 2006	Baa2	BBB		BBB
June 30, 2007	Baa2	BBB		BBB
June 30, 2008	Baa2	BBB		BBB
June 30, 2009	Ba2	BB		BB
June 30, 2010	Ba3	BB		BB
June 30, 2011	Ba3	BB		BB-
June 30, 2012	B3	B		CCC

- The City estimates that, as of June 30, 2013, the City will have \$121.5 million in other outstanding installment notes and loans payable related to various public improvement projects.
  - \$87.8 million in notes payable, which notes were issued in connection with the "Section 108" HUD Loan Guarantee Program and are secured by future "Block Grant" revenues.
  - \$33.7 million in loans payable (\$33.6 million of which is a non-interest bearing unsecured loan payable to the Downtown Development Authority as general operating funds become available).
- On August 23, 2012, the City issued \$129.5 million of LTGO bonds at a \$9.1 million premium (generating \$137 million in proceeds after issuance costs) in part to defease short term bonds issued March 2012. The remaining proceeds of this issuance were set aside with a trustee bank in an escrow account to provide funds for reforms and liquidity in FY 2013. The current amount of the escrow is approximately \$80 million.
- A schedule of the secured general obligation bonds and secured notes and loans payable as of June 30, 2012 is attached hereto as Appendix D. A schedule of the unsecured general obligation bonds and unsecured loans payable as of June 30, 2012 is attached hereto as Appendix E. A chart setting forth the annual debt service on the foregoing general fund obligations (and other liabilities) is attached hereto as Appendix G.

#### **Certificates of Participation (Pension).**

- In 2005, service corporations established by the GRS and PFRS created a trust that issued the COPs. The proceeds of the COPs were contributed to the City's pension trusts.
- Principal and interest on the COPs is payable solely from payments made by the City to the service corporations pursuant to service contracts.
- The City estimates that, as of the close of FY 2013 (*i.e.*, June 30, 2013), the following amounts were outstanding under the COPs:
  - \$480.3 million in outstanding principal amount of \$640,000,000 Certificates of Participation Series 2005 A maturing June 15, 2013 through 2025; and
  - \$948.54 million in outstanding principal amount of \$948,540,000 Certificates of Participation Series 2006 A and B maturing June 15, 2019 through 2035.

- The City has allocated portions of the COP liabilities among the transportation, sewage disposal, water and library funds based on each fund's share of the aggregate UAAL determined at the time of issuance of the COPs.
- The City has identified certain issues related to the validity and/or enforceability of the COPs that may warrant further investigation.
- A schedule of the COPs and related swap liabilities as of June 30, 2012 is attached hereto as Appendix C.

#### **Swap Liabilities Related to Certificates of Participation.**

- In connection with the COPs, the City entered into eight pay-fixed, receive-variable interest rate swap contracts, effective as of June 12, 2006, with a total notional amount of \$800 million.
- Recent valuations establish the negative fair value of the swaps at approximately \$343.6 million (as of May 31, 2013).
- January 2009 — The City received notice from the swap contract counterparties that downgrading of the COPs and certain swap insurers would constitute an "Additional Termination Event" under the swap contracts if not cured.
- June 2009 — The City and the swap contract counterparties agreed on an amendment to the swap agreements, eliminating the Additional Termination Event and the potential for an immediate demand for a termination payment. Pursuant to the amendment:
  - The swap counterparties waived their right to termination payments; and
  - The City agreed to:
    - direct certain wagering tax revenues to a trust as collateral for the quarterly payments owing to the swap counterparties;
    - increase the interest rate of the swap agreements by 10 basis points effective July 1, 2010; and
    - include new termination events, including if COP ratings were withdrawn, suspended or downgraded.
- March 2012 — COPs were further downgraded which triggered another Termination Event; City and the swap counterparties are in negotiations regarding the Termination Event.
- March 2013 — Appointment of Emergency Manager constitutes an event of default triggering another Termination Event.



- Although this proposal reflects treating the swap obligations as special revenue debt secured by the wagering tax revenues, that treatment is still being reviewed by the Emergency Manager.
- A chart setting forth the annual debt service on the COPs and related swap liabilities is attached hereto as Appendix H.

## UNSUSTAINABLE RETIREE BENEFITS.

### **OPEB Liabilities Are Large and Unfunded.**

- The OPEB plans consist of the Health and Life Insurance Benefit Plan and the Supplemental Death Benefit Plan.
- As of June 30, 2011 (the most recently published actuarial valuation), there were 19,389 retirees eligible to receive benefits under the City's OPEB plans. The number of retirees receiving benefits from the City is expected to increase over time.
- 99.6% of the City's OPEB liabilities are unfunded.

### **Health and Life Insurance Plan**

- Defined benefit plan providing hospitalization, dental care, vision care and life insurance to current employees and substantially all retirees.
- City generally pays for 80% to 100% of health care coverage for eligible retirees.
- \$5,718,286,228 in actuarial liabilities as of June 30, 2011. An updated actuarial valuation based on more recent census data is currently being developed by third party professionals.
- The Health and Life Insurance Plan is 0% funded; financed entirely on a "pay-as-you-go" basis.
- \$177,460,627 cost to the City on account of retiree benefits during FY 2012 provided under the Health and Life Insurance Plan.
- City's contribution is in addition to \$23,516,879 in FY 2012 contributions by retirees.

# Steady State Projection of Legacy Expenditures (assuming no restructuring)

	FISCAL YEAR ENDED ACTUAL					PRELIMINARY FORECAST				
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Legacy expenditures										
Debt service (LTGO)	\$ (66.6)	\$ (106.2)	\$ (63.5)	\$ (64.5)	\$ (62.6)	\$ (70.8)	\$ (70.9)	\$ (61.8)	\$ (61.8)	\$ (38.5)
Debt service (UTGO)	(67.2)	(71.5)	(72.4)	(72.8)	(73.0)	(70.6)	(64.9)	(62.5)	(57.6)	(57.6)
POC - principal and interest (GF)	(24.6)	(20.9)	(23.6)	(33.5)	(33.0)	(46.8)	(51.4)	(53.3)	(55.0)	(56.9)
POC - principal and interest (EF, excl. DDOT)	(1.8)	(1.4)	(1.5)	(1.8)	(2.0)	(5.3)	(5.9)	(6.1)	(6.4)	(6.6)
POC - principal and interest (DDOT)	(3.5)	(2.8)	(3.0)	(3.6)	(4.0)	(3.3)	(3.7)	(3.8)	(3.9)	(4.1)
POC - swaps (GF)	(38.6)	(43.9)	(44.7)	(44.7)	(44.8)	(42.9)	(42.8)	(42.8)	(42.7)	(42.7)
POC - swaps (EF, excl. DDOT)	(2.3)	(2.0)	(2.0)	(2.0)	(2.0)	(4.8)	(4.8)	(4.8)	(4.9)	(4.9)
POC - swaps (DDOT)	(4.5)	(4.0)	(4.0)	(4.0)	(4.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)
Pension contributions - Public Safety	(58.9)	(31.4)	(32.8)	(81.6)	(49.8)	(46.1)	(139.0)	(163.0)	(180.0)	(198.0)
Pension contributions - Non-Public Safety	(10.6)	(27.0)	(11.1)	(28.3)	(25.4)	(19.9)	(36.9)	(42.5)	(47.7)	(53.1)
Pension contributions - DDOT	(6.8)	(7.3)	(6.9)	(9.5)	(10.9)	(12.3)	(23.6)	(27.7)	(31.2)	(34.8)
Health benefits - retiree - Public Safety	(73.7)	(80.2)	(70.4)	(79.6)	(90.6)	(91.5)	(88.6)	(95.2)	(101.7)	(108.0)
Health benefits - retiree - Non-Public Safety	(47.4)	(51.6)	(50.6)	(49.0)	(49.2)	(49.7)	(38.8)	(41.5)	(44.6)	(47.7)
Health benefits - retiree - DDOT	(8.2)	(11.8)	(11.2)	(11.1)	(10.3)	(10.4)	(13.3)	(14.3)	(15.3)	(16.3)
Total legacy expenditures	\$ (414.6)	\$ (462.0)	\$ (397.9)	\$ (486.1)	\$ (461.6)	\$ (477.3)	\$ (587.6)	\$ (622.4)	\$ (655.9)	\$ (672.3)
Total revenues (excl. financing proceeds)	\$1,397.7	\$1,363.3	\$1,291.0	\$1,316.8	\$1,196.9	\$1,121.9	\$1,082.8	\$1,046.2	\$1,041.5	\$1,041.4
Total legacy expenditures as a % of total revenues	29.7%	33.9%	30.8%	36.9%	38.6%	42.5%	54.3%	59.5%	63.0%	64.6%